XI-HC-78

(33)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..Cr.A..890/96. **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

D. B.: Hon'ble Shri Justice L.C. Bhadoo &
Hon'ble Shri Justice Dhirendra Mishra.

CRIMINAL APPEAL No. 890/1996

APPELLANT : Korsami Rupa
S/o Mura Muriya
Aged about 23 years,
R/o Kaurgaon, P.S.
Barsoor, District Bastar.

Versus

RESPONDENT : State of Madhya Pradesh (Now Chhattisgarh) through Police Station, Gidam, District Bastar.

Shri R.K. Jain counsel for the accused/appellant.
Shri M.P.S. Bhatia Panel Lawyer for respondent/ State.

(ORAL) JUDGMENT
(Dated 13-3-2007)

L.C. Bhadoo,J

The accused/appellant has preferred this appeal against the judgment of conviction and order of sentence dated 2.2.1996 passed by 1st Additional Sessions Judge, Bastar at Jagdalapur in Sessions trial No. 167/1994 whereby he has been held guilty under

P.T.O.

(34) (2)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

section 302/34 of the Indian Penal Code for committing the murder of Koram Pandu and sentenced to undergo imprisonment for life.

2. Case of the prosecution, in brief, is that on 31.8.1993 complainant Kawasi Kosa (PW-5) along with other villagers namely Kawasi Meshram and Shivram had gone to village Hiranagar to see the fair. When they were returning in the same night, they heard the voice of shouting on the border of village Ghotpal and Hiranagar. On hearing the voice of shouting, they went there and saw that two persons were running away out of whom one person i.e. the appellant herein was caught by them, however, the other one managed to escape. The person who was caught by them disclosed his name as Korsami Rupa of village Kaurgaon. On the place of occurrence dead body of Koram Pandu was lying. Accused/appellant made confession before them for commission of murder of Koram Pandu. Thereafter, they took the accused to police station Gidam on 1.9.1993 and lodged the report Ex. P-5. After registering the case under FIR Ex. P-5 the Station House Officer of Police Station Gidam left for the scene of occurrence, after giving notice to the witnesses, he conducted inquest on the dead body of Koram Pandu and prepared inquest report Ex. P-2.

P.T.O.

(25) 3

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

Cr. A. 890/96

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

He took into possession one pair of *chappals* and one red colour towel under Ex. P-3. One club and lungi of the accused were taken into possession under Ex. P-4; site plan Ex. P-7 was prepared. Thereafter, dead body of Koram Pandu was sent for post mortem examination to Primary Health Centre, Gidam where Dr. P.K. Baisakh (PW-10) conducted the post mortem examination and prepared the report Ex. P-15. The doctor who conducted the post mortem examination opined that the cause of death was shock in consequence of excessive internal haemorrhage and death was homicidal in nature.

3. After completion of the investigation the charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Dantewanda, who in turn committed the case to the Court of District Judge, Bastar from where learned Additional Sessions Judge received the same on transfer for trial.

4. Prosecution in order to establish the charge against the accused/appellant has examined as many as 10 witnesses. Statement of the accused was also recorded under section 313 of the Code of Criminal Procedure in which he denied the material

P.T.O.

(36) (14)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

Cr.A. 890/96

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

appearing against him in the prosecution case and pleaded his innocence and false implication in the case. However, co-accused Raju alias Bhima could not be arrested and therefore the charge sheet against him was filed in his absence. Thus, the trial was faced by the accused/appellant only.

5. Learned Additional Sessions Judge after hearing counsel for the respective parties convicted and sentenced the accused/appellant as mentioned above.

6. We have heard counsel appearing for both the parties and perused the material available on record including the impugned judgment of the trial Court.

7. Counsel for the accused/appellant argued that as per the post mortem report and evidence of Dr. P.K. Baisakh (PW-10) there was a cut wound in the stomach of the deceased as a result of which the intestines came out of the stomach and that was the cause of death. Main accused Raju alias Bhima is absconding. The said injury was inflicted by sharp and pointed weapon whereas from the accused/appellant only the club was recovered and there is nothing on record to establish that the accused was having any

P.T.O.

(27)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

Cr.A. 890/96 (5)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

common intention with the absconding accused. He further argued that the so called eye witness has categorically stated that there was a dark night and they reached the place of occurrence only after hearing the cries and by that time the accused persons had already started running away. Thus, in fact they had not witnessed the assault made by the accused persons. He further argued that as far as the extra judicial confession made by the accused/appellant before PW-4 Lekami Guddi is concerned, complainant - Kawasi Kosa (PW-5) has categorically stated in his cross examination that they people gave 3-4 slaps to the accused/appellant and threatened him saying that he only has killed Koram Pandu and then they took him to the house of the village Patel. He has further stated that in their presence the accused did not say anything. As the accused/appellant was subjected to beating, the extra judicial confession made by him cannot be said to be voluntary. Moreover, the said extra judicial confession is not corroborated by any other evidence in order to ascertain the truthfulness of the same.

P.T.O.

(28)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

Cr.A. 890/96

(6)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

8. On the other hand, learned counsel appearing for the respondent/State supported the impugned judgment of the trial Court.

9. As per the prosecution case two persons i.e. the accused/appellant herein and the other absconding accused attacked the deceased. From the accused/appellant herein, only the club was recovered whereas injury No.2 which was the cause of death of Koram Pandu was inflicted by hard and sharp object but no such weapon has been seized from the accused/appellant herein. As far as the evidence of the eyewitness is concerned, PW-1 Kawasi Shivram has stated in his evidence that when they were returning after seeing fair in the night, the accused present in the Court and one other person were attacking Koram Pandu. Accused/appellant was carrying club in his hand. However, he could not see as to what the other person was carrying. Koram Pandu was lying on the ground and there was incised wound on his stomach. The intestines had come out. In the cross examination, this witness has admitted that the night was dark. They went to the spot after hearing the voice of beating and at the time of incident, it was raining. When they reached the spot both the accused persons

P.T.O.

Bila

Dat

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

tried to run away but on being chased, accused present in the Court was caught but the other one succeeded in his escape. This witness has further deposed that he is not in a position to tell as to who between the two was assaulting the deceased. PW-2 Kawasi Meshram has stated in his evidence that when he along with Shivram and Ayatu was returning from the market they saw that two persons were assaulting some one and after chasing them they could catch hold of accused present in the Court while the other one managed to escape. Koram Pandu was lying there. They brought the accused to village Ghotpal and handed him over to the village Patel. Accused was carrying club in his hand. In his cross examination, this witness has stated that after hearing the cries they went to the spot. The person who succeeded in escape was heading whereas the accused Korsami Rupa was following him. He further stated that accused present in the Court was just standing there, when the other accused started running away, he also started running but he was caught by them. Thus in view of this evidence it is apparent that the prosecution has not been able to establish the fact that these persons saw the accused assaulting the deceased. As per the evidence of this witness the

(40)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(8)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused/appellant herein was standing and when the other accused started running away, he also tried to follow him. PW-5 Kawasi Kosa who lodged the report in the police station has stated in his evidence that when they were returning in the night, they saw that accused Korsami Rupa and the other absconding accused were assaulting someone. When the other accused started running away, accused Korsami Rupa also started running away but he was caught by them. In the cross examination, he has not stated that in fact he saw the accused/appellant attacking the deceased. After hearing the cries they went to the spot and made an inquiry that " who are you and what are you doing". At the place where one person was lying and some other person was standing and behind that person the accused present in the Court was also standing. When the other accused started running away, the accused also tried to run away, however they were able to catch hold of him. Thereafter, they slapped him three-four times and then they took him to the house of the village Patel where he did not disclose anything to him. Thus, they have not seen the accused/appellant herein assaulting Koram Pandu. Perusal of evidence of these witnesses i.e. PW-1 Kawasi Shivram, PW-2 Kawasi Meshram and

P.T.O.

(41)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(9)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

PW-5 – Kawasi Kosha reveals that in fact these persons heard the cries, went to the site of occurrence, saw two persons running away and accused was caught by them and he was carrying club in his hand. There is no cogent and clear evidence that in fact they saw the accused/appellant attacking the deceased. Club was recovered from the possession of the accused/appellant whereas the fatal injury which was the cause of death of the deceased was inflicted by sharp and hard object which has not been recovered by the Investigating Officer nor any such weapon of offence was found on the place of occurrence that establishes the fact that the weapon with which the fatal injury was caused by the other person who managed to run away with the weapon. As per the evidence of these witnesses, when they reached the place of occurrence, the accused/appellant was just standing, therefore, in view of the above ocular evidence, the prosecution has not been able to establish the fact that the accused was sharing the common intention to commit murder nor any weapon of offence was recovered by which the fatal injury was caused.

10. Now as far as the extra judicial confession made by the accused before PW-4 Lekami Guddi, the village Patel is concerned,

P.T.O.

(42)

(10)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

in order to connect the accused with the crime in question based on the extra judicial confession, the prosecution was required to establish that the extra judicial confession made by the accused was voluntarily, true and prompt. As far as volunatriness is concerned, PW-5, Kawasi Kosa has stated in his cross examination that they slapped the accused 3-4 times and they asked him that he is the only person who has committed the murder and thereafter they took him to the house of village Patel. He has further stated that in their presence the accused has not disclosed anything to the village Patel. PW-4 – Lekami Guddi in his cross examination has stated that the villagers brought the accused in a tying condition and said that the accused has committed the murder of someone. On inquiry by this witness the accused replied that he has committed the murder of Koram Pandu. However, PW-5 Kawasi Kosa has stated that in their presence the accused had not stated anything to PW-4 Lekami Guddi. Thus, firstly there is contradiction in the evidence of the witnesses, secondly the voluntariness also is not there as Kawasi Kosa has stated that they slapped and threatened him; and lastly the extra judicial confession is not corroborated by any other evidence i.e. recovery of weapon of

P.T.O.

(43) (41)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर Cr.A. 890/96

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

offence by which the fatal injury was inflicted on the stomach of the deceased. Therefore, the prosecution has not been able to establish that the accused made legal extra judicial confession admissible in the evidence and therefore, the findings of the trial Court convicting the accused/appellant under section 302/34 of the IPC and sentencing him under that section cannot be sustained.

11. In the result, the appeal succeeds. Impugned judgment of the trial Court convicting and sentencing the accused as above is set aside. The accused/appellant is acquitted of all the charges levelled against him. It is stated that the appellant is in jail since 1.9.1993. He be set at liberty forthwith if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
DHIRENDRA MISHRA
Judge

P.T.O.